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ABSTRACT

This report synthesizes the discussions and findings of a series of Congressional hearings on the status of desegregation and methods of implementation in elementary and secondary public schools. The report focuses on the legal framework of school desegregation, emphasizing that court ordered desegregation is called for only when segregation is shown to have been deliberate and when voluntary methods have failed; the importance of local leadership and community involvement in the desegregation process; the impact of desegregation on educational programs, academic achievement (of majority and minority group students), educational patterns, employment, and white flight; remedies to correct the effects of segregation such as busing, pupil reassignment, pairing and clustering of schools, magnet schools, and voluntary methods; Federal legislation and financial support; proposed Constitutional amendments concerning desegregation; and strategies for effective desegregation plans. The report concludes that desegregation, if effectively implemented, provides benefits not only to classrooms and schools but also to communities. It is emphasized that while desegregation has increased demands on schools and communities, the benefits outweigh the costs. The report also includes supplemental views of some subcommittee members who argue against forced busing and prefer to encourage other methods of desegregation. (Author/MJL)

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97th Congress
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SCHOOL DESEGREGATION

REPORT OF THE
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
Together With Supplemental Views
NINETY-SEVENTH CONGRESS
SECOND SESSION

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History

In the 1st session of the 97th Congress, the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary undertook a series of hearings on the status of desegregation and methods of implementation in primary and secondary public schools.[1] In announcing these hearings, Chairman Peter W. Rodino, Jr. noted:

> It has been nearly a decade since the Committee on the Judiciary fully reviewed the issues associated with school desegregation.[2] Much has happened since then, and I believe it is incumbent upon us to now reassess the progress as well as the problems. Accordingly, the Subcommittee on Civil and Constitutional Rights, chaired by Don Edwards, will begin a series of comprehensive hearings on July 29, 1981 . . . The topics will include the following: the impact of school desegregation plans on academic and post-educational achievement of minority and majority students; the impact of such plans on housing patterns and race relations; the extent of community acceptance after such plans have been put into effect; the circum..tances under which courts and school boards have ordered busing and other remedies; the extent and cost of school busing to achieve desegregation and for other purposes.
>
> Chairman Edwards and I believe the hearings will provide an appropriate forum to consider and debate these issues. A full record will be compiled by hearing from social scientists, educators and lawyers who have done extensive research on school desegregation, and Members of Congress, school administrators, school board members, teachers and parents from communities that have come through the process of desegregation. These people can testify from practical experience about the effectiveness of court-ordered and voluntary plans.
>
> To this end, we invite your assistance, by providing your own comments, and those of knowledgeable spokespersons from your districts, for it is our intention that the hearings provide a fair and responsible expression of all points of view.[3]

Witnesses

The Subcommittee did hear from witnesses representing all of the categories described in Chairman Rodino's letter.[4] Social scientists, drawing upon a wealth of information and research that has accumulated in the last decade, provided the Subcommittee with a much needed objective appraisal of the impact of school desegregation on educational programs, achievement scores, housing patterns, private school enrollment, and the college and career patterns of minority students. Based upon this data, those experts were able to offer their views as to desegregation strategies that appear to maximize educational benefits while minimizing negative effects, including public resistance.

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[1] By excluding the issues relating to desegregation in post-secondary public education, the Subcommittee does not intend to imply any lack of concern regarding this equally important area. Rather, the scope of the Subcommittee's inquiry was limited solely for purposes of manageability..

[2] See "School Busing," Hearings before Subcommittee No. 5 of the Committee on the Judiciary, House of Representatives, 92d Congress, 2d session, Serial No. 32, 1972.

[3] Dear Colleague from Peter W. Rodino, Jr. to Members of the House of Representatives, June 17, 1981.

[4] The witnesses appearing before the Subcommittee were:
September 17, 1981: Congressman Ron Mottl; Tom Atkins, General Counsel, NAACP; Dr. Jay Robinson, Superintendent, Charlotte-Mecklenburg Schools; Nathan Glazer, Professor of Education and Sociology, Harvard University Graduate School of Education; Julius Chambers, President, NAACP Legal Defense and Education Fund Inc.

(Continued)

The Subcommittee heard from school board members and school superintendents from large urban areas where "minorities" are the majority, from southern and border state cities that once operated state-mandated segregated school systems, and from a large western city which voluntarily instituted a desegregation plan with an element of mandatory busing. Several Members of Congress, representing areas across the country, testified; most focused on their constituents' dissatisfaction with busing as a means of achieving desegregation.

The Subcommittee also heard from counsel for the civil rights organizations that brought many of the leading cases on school desegregation; from others who questioned the wisdom of the current judicial interpretation of equal protection under the Constitution; from an organization of parents and other citizens opposed to busing and the role the courts have played in the process of desegregating our schools; from the Chairman of the U.S. Commission on Civil Rights, and from the Assistant Attorney General for the Civil Rights Division of the Department of Justice.

The Subcommittee is well aware that no Congressional hearings can provide all the information and opinion available on this divisive subject. However, the Subcommittee is confident that a full spectrum of opinions was expressed; that the review of academic research was sufficiently comprehensive to permit the drawing of informed conclusions; and that the focus on selected communities provided an accurate cross-sectional view of the practical problems and successes found in the real world of school desegregation.

Purpose

The report that follows is based upon this record. In the view of the Subcommittee, this information will add significantly to Congressional consideratiin of issues relating to public school desegregation: misinformation and misunderstandings can be replaced with realistic assessment; problems can be identified and dealt with without foresaking the larger goal.

The Subcommittee also believes that with greater knowledge will come greater acceptance of a national policy in favor of effective rem-

(Continued)

September 21, 1981: Congresswoman Bobbi Fiedler; Congressman Parren Mitchell; Professor Gary Orfield, University of Illinois and Brookings Institution.

September 23, 1981: Congressman James Collins; Congressman Norman Shumway; Dr. Diana Pearce, Center for National Policy Review, Catholic University; Dr. David Armor, Rand Corporation; Christine Rossell, Professor, Department of Political Science, Boston University.

October 7, 1981: Dr. Arthur Flemming, Chairman, U.S.. Commisssion on Civil Rights.

October 14, 1981: Congressman Robin Beard; James Blackburn, Member, Board of Education, Memphis; Maxine Smith, President, Board of Education, Memphis, NAACP-Memphis, Executive Secretary; Suzanne Hittman, President, Seattle School Board.

October 19, 1981: Dr. Robert L. Crain, Principal Research Scientist, Center for Social Organization of Schools, John Hopkins University; Dr. Norman Miller, Professor of Psychology, University of Southern California; Dr. Meyer Weinberg, Director, Horace Mann Bond Center for Equal Education, University of Massachusetts.

October 21, 1981: Willis D. Hawley, Dean George Peabody College for Teachers, Vanderbilt University, Nashville, Tennessee; Dr. James McPartland, Center for Social Organization of Schools, The Johns Hopkins University.

October 29, 1981: Dr. Joseph Johnson, Superintendent, Red Clay Consolidated School District, Wilmington, Delaware; William D'Onofrio, National Association for Neighborhood Schools, Wilmington, Delaware; Professor Jeffrey Raffel, College of Urban Affairs, University of Delaware.

November 4, 1981: Dr. Robert Wentz, Superintendent, St. Louis; Majorie Weir, Chairman, Board of Education, St. Louis Schools; Congressman Bill Emerson.

November 19, 1981: Congresswoman Mary Rose Oakar; William Bradford Reynolds, Assistant Attorney General for Civil Rights Division.

The Subcommittee intends to continue these oversight hearings into the 2d Session, at which time additional witnesses will be heard.

edies for school desegregation. The experience thus far supports this conclusion. One federal judge, James B. McMillan of North Carolina, who handed down one of the first decisions involving busing [5] told a Senate Subcommittee of his study of the facts:

> We tend to deal on an emotional level with a problem which constitutionally is essentially a question of fact . . . [A]bout 20 years ago, . . . I made some remarks to the effect that I hoped that we would be forever saved from the folly of transporting children from one school to another for the purpose of maintaining racial balance of students in each school.
>
> Well, that expressed my feelings. Five years later I got in the position where I had to act on something that was based on fact and law rather than feelings.
>
> Senator Ervin, for whom I have tremendous admiration and respect and who in effect appointed me to my present job, had essentially the same views then that I did then. I have had to spend some thousands of hours studying the subject since then and have been brought by pressure of information to a different conclusion.[6]

Facts can also change the way the public feels about desegregation and busing. For example, polls indicate that parents whose children are being bused for desegregation have far more positive views about the experience than do citizens whose opinions are based on more remote involvement with the issue.[7] Likewise, researchers in Wilmington, Delaware found that as the desegregation experience came closer to home, parents evaluated those experiences higher; i.e. although parents tended to rate the school system poorly, at the same time, they viewed their own child's school as good or excellent.[8]

Finally, these hearings and the synthesis of findings they contain can provide guidance to others—school board members, judges, and members of the Executive Branch—who are struggling with the problem of fashioning effective, publicly acceptable, and educationally sound desegregation plans.

Context

Since 1972, the focus of school desegregation has altered significantly in this country. Much of the South is now effectively desegregated; where once busing was used to achieve segregation, it is now used to sustain a desegregated system. In the North, the continuing exodus of whites from the inner city has left large concentrations of minority students in financially bankrupt school systems. Meaningful system-wide desegregation within those cities has become statistically impossible unless remedies extending to districts beyond city borders are imposed.

The ability and willingness of the federal government to seek desegregation has altered. The alternative of administrative enforcement (through withholding of federal financial assistance by the Department of Education) has all but been eliminated.[9] Within the past year, the Justice Department has abandoned advocacy of many effective remedies, has rejected or diluted prosecution of several major cases, and appears to have initiated no new investigation.[10]

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[5] *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971).

[6] Testimony before the Senate Committee on the Judiciary, Subcommittee on the Separation of Powers, October 16, 1981.

[7] School Desegregation, Hearings before the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary House of Representatives, 97th Congress, First Session (hereinafter referred to as "Hearings") at p. 4.

[8] Ibid. at pp. 456, 464–467; 510.

[9] The Esch Amendment, 20 U.S.C. § 1714(a) (1973); the Byrd Amendment, 42 U.S.C. 2000d (1976) and the Eagleton-Biden Amendment, 42 U.S.C. 2000d (1976) taken together have prevented the Department of Education from requiring school desegregation.

[10] See discussion infra, at pp. 21–25.

All of these indications of retreat have come during a decade when numerous communities have peacefully and successfully desegregated their school systems; the fruits of that effort are now being realized by millions of students. The irony of this juxtaposition can be explained by the paucity of knowledge about what really has been happening. The information has been available, but most have chosen to ignore it. It was the hope of this Subcommittee that these hearings will help to reverse this trend.

Legal Framework

Misunderstandings as to what the constitution requires, what the courts have ordered and why, have contributed significantly to public confusion and opposition to certain methods for achieving desegregation. For example, the rhetoric often implies that federal courts have ordered desegregation simply upon a showing of unintentional racial imbalance within a school, and that mandatory methods (particularly busing) have been ordered even though voluntary methods would achieve the same or better results.

In fact, the law requires far more—it is only segregation that has been deliberately established or aggravated by state action that falls within constitutionl proscriptions,[11] and courts have ordered mandatory remedies only after finding that voluntary methods have failed and will continue to fail to achieve desegregation.

The Chairman of the U.S. Commission on Civil Rights well summarized this point:

> The courts found the mere presence of segregation, de facto segregation, to be inadequate evidence of a violation in instances where there was an absence of State laws requiring school segregation. In 1972, the Supreme Court in *Keyes* examined the concept of de jure segregation and held that in addition to laws requiring segregation it includes deliberate actions taken by school officials, local officials, or State officials that create or support dual systems of education. The Court recognized that school board policies and practices regarding "school site location, school size, school renovations and additions, student-attendance zones, student assignment and transfer options, mobile classroom units, transportation of students, assignment of faculty and staff," could be employed to create or maintain school segregation. Since this decision was rendered, any school district that has been found to be segregated as a result of actions taken by public officials has been under the same obligation to desegregate as are those that were segregated by State law.
>
> It is important to underscore that courts have imposed orders requiring the reassignment and where necessary, the transportation of students only where a violation of the 14th Amendment by government officials has been judicially determined and where other school desegregation methods have proven inadequate to remedy the violation. Litigation in individual school desegregation cases generally involves numerous evidentiary hearings and multiple judicial decisions which cover a number of years. Before ordering any remedy, Federal cases generally involves numerous evidentiary hearings and multiple judicial district courts have uniformly required local school authorities to develop their own plans for school desegregation. Judges have ordered implementation of specific remedies only when school districts have failed or refused to propose plans that will effectively eliminate the vestiges of segregation in their schools.
>
> The meaning of *Brown* must be clearly understood by those examining the process of school desegregation. It does not require quality education for all children nor does it mandate racial balance. Although school districts should

[11] For a description of the kinds of deliberate, segregative activities that have justified remedial orders from federal courts, see the memorandum prepared by the Center for National Policy Review, Hearings at p. 261, et seq., and the testimony of Tom Atkins, Hearings at p. 34 et seq.

seek, as a part of a desegregation plan, to improve the quality of education, they are not required constitutionally to do so. All they are required to do is to break up the segregated system. Also, contrary to allegations made by some opponents of desegregation no Federal judge has required a single school district to achieve racial balance in all of the schools in the district. Again, all that is required is to break up the segregated system.

The crux of *Brown* is simply this: officially imposed segregation in education discriminates against minority children and denies them the right to equal educational opportunity which is guaranteed by the United States Constitution. Desegregation is the constitutional remedy mandated by the Supreme Court. In interpreting this mandate, Judge John Minor Wisdom noted "The only school desegregation plan that meets constitutional standards is one that works." Stated another way, a right without an effective remedy is meaningless.[12]

Local Leadership

The importance of local leadership in the desegregation process was emphasized by many of the witnesses, particularly those testifying as to the experience in their own communities. Where local officials-members of the school board, the superintendent of schools, the mayor, the media, and others in a position to influence public opinion—expressed their support for the rule of law and the need to make a desegregation plan "work," public acceptance was greatly enhanced and the quality of education was improved.[13]

Even where the support was belated, and followed years of open resistance, this leadership made an important difference.[14] In cities where those officials denounced the court, called upon parents to abandon the public schools, and otherwise fed the fears of an anxious community, the public reacted accordingly—open resistance continued and the movement out of the public school system was exacerbated.[15] This weakening effect on the community's belief in its school system has proved to be so profound that it appears to continue even after the purported cause of the white flight—busing—has been withdrawn.[16]

The failure and refusal of school officials to avoid segregative actions, to take the initiative once the problem has been identified, or to devise adequate plans once a constitutional violation has been judicially established, created the void that the courts reluctantly have filled. In those unusual instances where the local community did assume its responsibility, the benefits to the community were significant. In St. Louis, for example, the Board of Education, when

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[12] Testimony of Dr. Arthur Flemming, Hearings at pp. 246–247. See also testimony of Tom Atkins, Hearings at p. 32 et seq.

[13] This conclusion accords with the principal finding of the 1976 report of the U.S. Commission on Civil Rights, *Fulfilling the Letter and Spirit of the law*. That report, based on studies, hearings and surveys of school desegregation in hundreds of school districts, found that "school desegregation does work and one of the principal ingredients for its success is positive local leadership." Testimony of Dr. Arthur Flemming, Hearings at p. 247.

[14] See testimony of Dr. Jay Robinson, Superintendent of Schools, Charlotte-Mecklenburg County, Hearings at p. 17 et seq.

[15] See, for example, testimony of Tom Atkins, Hearings at pp. 41–42.

[16] Predictions were made by school officials, and former Board member Congresswoman Bobbi Fiedler, that the enrollment of white children in Los Angeles would increase substantially following the abandonment of that city's school desegregation plan. One witness was so confident that this would occur that he testified:

"For those who do not believe in white flight. I think it is important to recognize that in the first major city to stop mandatory busing, there has been a significant increase in white enrollment in the schools that were being bused before."

Testimony of David Armor. Hearings at pp. 216–217. However, statistics released by the Los Angeles school board and submitted to the Subcommittee indicate otherwise. See Hearings, pp. 176–177.

confronted with a choice as to whether to further appeal a court order to desegregate:

> • • • came to a decision aimed at serving the best interests of the St. Louis community. That decision was not to appeal and to put our full and sincere effort toward an educationally sound and effective desegregation plan. And with the cooperation of many civic, religious, and cultural leaders the St. Louis community accepted, and, in some cases, rallied behind the effort to comply with the orders of the court in a responsible and law abiding way.
>
> None of this was easy. All of it required some change or sacrifice from someone, but leadership had decided to build rather than to destroy. The citizens, especially our students, made that decision work. In fact, on the first day of school at Soldan High School, the local students greeted those arriving on the buses with ribbons carrying the slogan, "Let's make it work."
>
> No more apt slogan could have been found for the attitude with which responsible people approached the challenge. As a result, the name of our city is not a smear on America's face.[17]

Describing the even greater latitude available to a community that creates its own desegregation plan, without the intervention of the courts, the President of the School Board in Seattle testified:

> We were able to develop the processes by which a citizen would be involved without having to ask an external body. We developed the definition of what constituted a racially-imbalanced school. We were able to get the citizen input to put it together with what would be educationally-sound strategies.
>
> We do have, for example, the ability for education with sound reasons to maintain some schools which are and continue to be racially imbalanced.
>
> One good example is our bilingual orientation center. We have so many Asian immigrants who are moving into the area that we maintain a school for them to be in no longer than about ten weeks. But we have to maintain this for the orientation because they are new to the country. They need some opportunity to bridge the cultures initially and learn some things . . .
>
> My concern would be that if we were under court order we would not have the opportunity to make educationally-sound strategies our uppermost goal. Education is what we are about and not busing.[18]

An absence of community involvement and consultation, even when self-imposed, breeds public resentment to a court order, even where the methods of desegregation are not in themselves onerous. In New Castle County, Delaware (metropolitan Wilmington), for example, the busing plan ordered by the court involves suburban children for only three out of their twelve years in public school; aside from school closings caused by declining enrollments, during the remaining nine years, the concept of neighborhood schools is generally adhered to. Nevertheless, many suburban parents oppose the desegregation plan. Voicing these concerns, the President of the National Association for Neighborhood Schools not only indicated his opposition to busing as a desegregation remedy, but took the position that the intervention of the courts into the school system has damaged education in New Castle County:

> [T]he issue is not just transportation; it never is. In that respect busing is a misnomer. The issue is a perception of what has happened to the quality of education. The issue among many of the people that I associate with, my colleagues, is a feeling of constitutional perversion, a feeling that the law has been distorted, a feeling that Government is doing something it has no business doing and has no business forcing upon people. It is all tied in together.[18a]

However, it is the belief of this Subcommittee that the resentment borne of losing control over one's educational system accounts for

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[17] Testimony of Robert Wentz, Hearings, at p. 577.
[18] Testimony of Suzanne Hittman, Hearings at pp. 377–378.
[18a] Testimony of William D'Onofrio, Hearings at p. 517.

much of this negative perception. As evidence described in the section that follows indicates, in many cases, including New Castle County,[19] educational quality has in fact improved under the impetus of desegregation. It is not the courts that are to be blamed for this absence of involvement, but rather, the local officials who fail to assume their legal responsibilities.

The contrast between the experience of communities with public officials that have tried to make desegregation work and those that have not, is striking. One witness had the advantage of being involved in two such differing cities:

> I had the experience of serving as a court expert in Los Angeles in 1978, as one of the 8 people appointed, I was serving as the court's sole expert in St. Louis for 15 months before I came to Washington. I saw the implementation of desegregation plans in two cities, each about ¾ minority. It was like night and day * * *[20]
>
> In Los Angeles there was an extraordinary situation where the school board was taken over by a movement, Bus Stop, which campaigned on a program which is virtually nothing but resistance to the courts. When they became the leaders of the school board—and they contributed the president of the school board and other members—they dedicated themselves to disrupting and destroying successful desegregation processes.
>
> I think I would just like to quote a few things that they said at the time that the court handed down its order last year.
>
> The School Board President, Roberta Weintraub, said "No white parent in their right mind is going into an area which is all black," not something that a school board president would say who wanted to make it work. Associate Superintendent Jerry Halvorsen said that "Only God knows what will happen in September," following Judge Egly's order.
>
> Board Member Bobbi Fiedler said maybe Congress would pass a law that would outlay busing. She demonstrated in front of the Office of the Court Monitors during her congressional campaign. She said the order could well bring the destruction of public education in the City of Los Angeles. That was a member of the Los Angeles School Board.
>
> Other board members made similar comments. They fought to virtually the last day. As a matter of fact, even after school was open, people didn't know where their children were going to go to school. It was the most chaotic situation I have ever seen in many years of looking at school desegregation plans * * *
>
> I have traveled around the Deep South many times when orders were being implemented. I have never seen anything quite at this level of instability and chaos. Thousands of children didn't know where they were supposed to go to school. They were told by their own school board president and leaders that the public education was at an end, they were advised to transfer to private schools * * *[21]
>
> There were no statements by any board members predicting anything bad for the school district in St. Louis, there were no politicians elected to the school board on that issue. The school superintendent, once he realized he was going to have to do it, decided he was going to make the best of this process. He created a new level of school administration and magnet schools, all of which were successfully integrated, approximately 50–50.
>
> They created a system attractive enough so that now some hundreds of suburban white children are beginning to transfer in. On the first day of school, instead of one board member calling another a racial epithet, the school superintendent said that they had had a super day. The police all stayed in their headquarters, nothing happened across the city.
>
> It was a very tough situation to deal with. That school district has had many problems in the past, but extremely positive and strong leadership by the school board and school administration meant that parents could know where their

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[19] See testimony of one of metropolitan Wilmington's superintendents of schools, Dr. Joseph Johnson, who testified that both white and black students are scoring significantly higher achievement test scores since the start of the desegregation order, Hearings at p. 447.

[20] Testimony of Gary Orfield, Hearings at p. 170.

[21] Ibid., at 145–146.

children were going to go to school, what their choices were. They weren't put in a totally chaotic situation.

The schools opened integrated, without any significant incident. Even in the first year they showed a significant educational gain.

I am sure that as political leaders yourselves, you realize how important responsible elected officials can be in setting the tone. I believe appointed administrators are equally as important within school districts. The extremely important message that superintendents and other top leaders send shows whether or not this is a serious issue, whether or not there is a real educational and professional responsibility.

When Minneapolis desegregated, the superintendent let everybody know he was going to be at the training sessions to learn about the racial background of his students, he expected his cabinet and everybody else who wanted a future in the schools to be there. That conveys a message. Somebody going on TV and saying this is the end of education conveys a very different message.

The people who are down at the end of a transmission belt in a large bureaucracy react to those messages, and react with optimism or hopelessness, with the sense that they are going into an important reform, that they are going to come out with a new accomplishment, or the sense that they are engaged in totally chaotic unproductive activity.[22]

Educational Impact

1. ROLE OF THE COURTS

The problem described above—public dissatisfaction with the educational impact of court-imposed desegregation orders—can also be attributed to unrealistic expectations about what the court can and should do. The mandate of a court called upon by the dictates of constitutional law to desegregate a school system is simply to desegregate that system—that is, undo the effects of purposeful racial segregation by imposing changes that achieve some semblance of racial balance within the affected schools. This duty flows from the Supreme Court's finding in *Brown* v. *Board of Education*[23] that separate education is inherently unequal. It is not the duty of the court to institute educational reforms that will improve the scholastic performance of minority students. Nor is it the court's responsibility to ensure that white students fare no worse under a desegregated than a segregated system.

Nevertheless, without such a result, no desegregation order will be accepted by the public. Whether constitutionally mandated or not, the public demands—not unfairly—that in return for the uncertainty and change flowing from desegregation, their children get a better education.

Increasingly, courts and school officials are responding to that demand. Conscious efforts are being made to use the impetus of desegregation as a catalyst for educational changes designed to improve scholastic achievement.

2. EDUCATIONAL IMPROVEMENTS

For the school system, the court order or voluntary decision to desegregate can force a constructive reexamination. As one witness described it:

[W]hen school desegregation occurs, school systems have to stop and say, "What have we been doing?" And whether it is because citizens are watching over

[22] Ibid., at 170–171.
[23] 347 U.S. 483 (1954).

their shoulders, because parents are making greater demands or because the court is sitting on them because of pressures and assistance from a State agency or Federal agency or whatever, there is a reexamination. And it is very clear when we look at these school systems that new things happen.

This is not a magical process in which kids are mixed together and all of a sudden something good happens. There are new programs adopted. There are changes in teacher behavior. There is some in-service training that did not happen before.

As I say, there is a kind of introspection that is not common in organizations that do not experience some kind of crisis. So, school desegregation in some instances has that kind of effect.[24]

School superintendents agreed that desegregation had been a crucial catalyst for improvement:

I don't think the kinds of changes within that period of time and the shifts that were made and the concentrated efforts would have happened as a total community without the impetus of that court order.[25]

Ideally, courts compelled to order desegregation can rely on school officials to devise and implement educational changes. The Subcommittee found that some school officials responded enthusiastically to this challenge. In St. Louis, Missouri, for example, the Superintendent described the educational components of the desegregation plan devised by the board, with the active assistance of private citizens and school officials, as follows:

The desegregation plan changed the organizational structure to grades Kindergarten through five for elementary schools, grades six through eight for middle schools and grades nine through twelve for high schools. This allows for specific programming for the respective ages of students and opens a number of new learning opportunities.

For example, by concentrating larger numbers of students in grades six through eight in a middle school, we could provide industrial arts, home economics, laboratory science, fully-equipped and staffed libraries and full-time counselors, thus producing a much stronger curricular and co-curricular program.

To provide some exciting new programs, we developed several new and expanded magnet schools, such as a Montessori school, an Athletic and Academic Academy, a Center for Expressive and Receptive Arts, and expanded gifted program, a Classical Junior Academy, and additional Individually Guided Education School, a Business, Management and Finance Center, a Health Careers Center, and a Naval Junior ROTC Academy. In addition, we expanded the Honors Art and Honors Music programs, started a secondary level gifted program, the Senior Classical Academy, and incorporated a Mass Media Program into one of our regular high schools.

The system developed and implemented a variety of new and improved services. Expanded career education, expanded school partnerships with business, cultural and higher education enterprises, a new English as a Second Language Program, pairing and sharing programs involving city and county schools, a revitalized thrust of parent involvement and a special student leadership program are some of the excellent programmatic emphases that resulted from a strong, education-based desegregation plan.[26]

Even when the educational changes are initiated by the court, desegregation can be a vehicle for significant improvement. In Boston, for example:

Occupational or career education . . . has profited greatly from desegregation. In this last academic year, 1979–80, they opened the Humphrey Occupational Resource Center, a $40 million structure which is now an all-city facility where high school students go to their home high school in the morning or afternoon

[24] Testimony of Willis Hawley, October 21, 1981, Hearings at p. 424.
[25] Testimony of Superintendent Robert Wentz, Hearings at p. 592.
[26] Testimony of Robert Wentz, Hearings at p. 578.

and come to the ORC, the occupational resource center, in the afternoon. No single school could do it if it were simply a neighborhood vocational high school. Again, it has to be attributed to the clout that the court has because the judge found specifically that vocational educational facilities of the Boston school system were very deeply flawed by deliberate segregation, and therefore this is one way of remedying it.

3. EDUCATIONAL RESULTS

The Subcommittee was particularly heartened to discover that both minority and majority students involved in desegregation plans do seem to be getting an improved education. As measured by standardized scholastic achievement tests, the evidence is compelling that in almost all cases, black students have done significantly better in desegregated schools, and white students often score higher, but in any event, have not scored lower following desegregation.[21] In other words, the evidence suggests there is no reason to believe that whites learn more in a segregated school system, and there is strong evidence that blacks fare worse.

The precise reason for this phenomena is not well understood. Whether it is the institution of the educational changes described above, the infusion of greater human and financial resources into the desegregated schools, the increased commitment of teachers, or some other explanation, the trend is clear. One witness tried to explain it this way:

> I think there is increasing evidence that the most popular explanation for why achievement increases is probably not right. That explanation is what sociologists call "the lateral transmission of values." The idea is that if low-ability students sit next to high-ability students they will acquire their values or emulate them or whatever, just because they sit there.
>
> Rather, it is that these students are, in effect, resources that a teacher who knows how to work with students can use to create learning situations that did not exist in that class before. Students learn from each other in a direct way, but that only happens when teachers make it happen. It does not happen accidently.
>
> It may also be that teachers who deal with heterogenous classrooms learn that you have to deal with students as individuals and they therefore begin to be more sensitive to stereotyping and low expectations they have held for minority students. This benefits not only minorities and low achievers, but high achievers . . .
>
> A fourth thing I would say is that when you are changing the socioeconomic characteristics of students you are also changing the socioeconomic characteristics of parents obviously enough. Parents who are middle class are in a better position because of experience, time and status to make demands on a school system and to feel comfortable in going in and working with fellow professionals and, in a sense, not being so easily turned off. There is a concept that we talked about in parent-teacher relationships that teachers learn how to "cool the mark." They learn how to work with the parents in a way that parents assume that things are alright and thus do not make demands on the system.

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[21] Testimony of Meyer Weinberg. Hearings at p. 409.

[22] In 1964, while writing an early summary of research on desegregation, I noticed something unexpected: White children did no worse, academically, in a desegregated than in a white-segregated school.

Widespread impressions to the contrary at that time were based on an expectation that the presence of minority children somehow diluted the academic quality of learning in a school.

Three years later, a more thorough review of research showed once again that white achievement was unaffected by desegregation. Both in 1970 and 1977, and now again in 1981, later reviews of research by me have not disturbed that finding. It can be found in virtually every review of research, regardless of the author. Indeed, this finding has become the single most widely accepted finding in the field.

Testimony of Meyer Weinberg, Hearings at p. 398.

All professionals do this to their clients, but middle class folks who do this to other people are less tolerant of it and see through it and make demands. So there are both political and educational explanations, I think, for why this happens.[29]

The evidence on scholastic improvement in desegregated schools has come not from the federal government, which has failed conduct or support systematic national research since before the Supreme Court's first busing order.[30] Rather, it is based on the lessons drawn from scattered local studies and the more systematic research efforts by academics at universities and research institutes. Several of the most prominent scholars involved in this endeavor testified before the Subcommittee.[31] Dr. Robert Crain focused his analysis on black achievement, and described his findings as follows:

I located 93 studies, each done in a single community undergoing desegregation. Slightly over half of these studies conclude that black test scores are enhanced by desegregation; most of the rest conclude test scores are unaffected, and occasionally a study argues that black test scores are harmed by desegregation.

I spent over a year reading all of these studies, and found that the reason why there was a disagreement among them boiled down to some questions about the way the research was done.

The most important fact is that desegregation is not necessarily beneficial in the first couple of years, because black students who start out in segregated schools and then suddenly switch over to desegregated schools apparently do not benefit academically.

It is only after the first few years, when the students who started desegregation at first grade are tested, that you begin to see the achievement results . . .

I am, at this point, quite convinced that desegregation raises the test scores of black students without harming the test scores of white students. I also found 13 studies which looked not at achievement tests but at IQ test scores, and I again found a consistent increase in IQ, apparently as a result of desegregation.

The studies that I have reviewed all deal with single communities, but the national assessment of educational progress has been studying the educational performance of American young people for some time now, and they have found across the Nation that black test scores have been rising markedly and faster than white scores in the past few years, and they found that again especially true in the Southeast, where there has been the most desegregation.[32]

Explaining the significance of the magnitude of the improvement found in one typical community (Louisville, Kentucky) where black test scores improved, Crain said:

One way to state it is as follows: Suppose I were the Dean of Admissions of a rather selective technical university, and I said that my students were such that I would only take students in the top third of the high school graduating class of the United States.

Suppose I had 600 black students applying, and their scores looked like the black student 3rd grade scores in 1976. Out of that 600 I would take 100. The remaining 500 would fall below my admission standards.

If I had a group of graduating black high school seniors whose scores looked like the 3rd grade scores for 1978, two years later, I would have taken 150 instead of 100, a 50 percent increase in the number of students I would take. That is quite a large difference . . .[33]

The evidence on scholastic improvement is not without its critics and skeptics, however. Dr. Norman Miller, for example, testified as to the methodological weaknesses of the studies:

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[29] Testimony of Willis Hawley, Hearings at p. 425.
[30] Statement of Orfield, Hearings at p. 146.
[31] Drs. Crain, Weinberg, Miller, and Hawley.
[32] Testimony of Robert Crain, Hearings at pp. 382 and 385.
[33] Testimony of Robert Crain, Hearings at p. 384.

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When the conclusions of individual studies are taken at their face value, the majority do report academic benefit for minority children. Virtually all the studies, however, are very weak in their research design, and very few, if any, are published in journals that require rigorous peer review.

Indeed, most are unpublished. This has led some reviewers to try to categorize studies in terms of the relative strength or weakness of their research design and to try to exclude very weak ones from consideration. Perhaps because the individual studies are often flawed in at least several respects, reviewers often differ in their assessment of which studies possess the stronger research designs.[34]

He also questioned whether benefits had been achieved in view of the fact that:

[I]f desegregated blacks make educational gains but desegregated whites make even larger gains, then the competitive position of blacks has worsened rather than improved.[35]

Finally, he noted that:

It comes as no particular surprise when a reviewer's conclusions matches his or her own ideological stand or the position he or she has taken in courtroom testimony.[36]

However, the overwhelming consensus among researchers is that test scores of minority students in desegregated schools usually increase, particularly when certain factors are present—desegregation beginning in the first grade and involving a significant percentage of middle class students.

In the face of this evdience, then, why do parents and public officials (including many Members of Congress) believe desegregation to have been an educational failure?

When asked why there is a gap between the public perception of what is going on in desegregated schools and what the social scientists are telling them, one witness responded:

Almost certainly, when desegregation occurs people begin to be more interested in schools. By and large, parents send their children to a school and hope for the best. They assume things are going well and that is the responsible thing to do as a parent. You really do not want to know all the weaknesses, because if you did, you would have to invest a lot of energy and time and so forth in the enterprise. So what school desegregation has done is to bring people in closer contact with the schools and some of the fantasies they had about the way it was in the "good old days" or the way it is even recently are not sustained.

So part of what has happened is that people are finding out that schools are not quite as good as they thought they were independent of desegregation itself. The irony is that even though desegregation may lead to achievement gains, those gains can never reach the levels of people's expectations they had to start with.

The second thing is expectations themselves change. I think many parents who are supportive of school desegregation use language like this. "Well, I think that it is just a really good thing for my kid to go to a school where they get to know other children and people from other backgrounds." But there is an assumption in that statement that somehow they are going to lose something in the process.

The parents who are not sympathetic to school desegregation bring that same logic to work in saying, "We want more for our children than we had before." There is some kind of sacrifice they are going to make and therefore that school is going to have to do better than they did before. What was once satisfactory is no longer satisfactory.

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[34] Testimony of Norman Miller, Hearings at p. 394.
[35] Ibid., at p. 395.
[36] Ibid.

Third, there is simply an assumption that minority schools cannot be good schools. If you are sending your child to a school that was formerly a minority school, it just does not logically fit that it could be a good school. All of the evidence is that minority children achieve at lower levels than white children, so how could a racially mixed school be as good as a predominately white school? It does not fit.

Fourth, a common way of presenting the story in the newspaper is to present the positive point of view and a negative point of view. This is a "balanced perspective". If you are a parent and you say, "Well, there is a 50/50 chance that things are going to go well in that school," the responsible position is that you are not going to take that risk. I am not very happy about those odds. We certainly want our children to be secure and every incident that occurs in the school is generalized. If there is a violence level of two percent in that school, my concern as a parent is that my kid is going to be one of those two percent. When those issues become more and more visible our sense of anxiety and concern is heightened."[37]

Another witness succinctly put it this way: desegregation "brings out the warts" in a school system.

Long-Term Impact

1. Education and Career Patterns

Notwithstanding the positive test score results described above, the Subcommittee believes that it may be at least as important to assess the educational benefits of school desegregation by the standard of how well students do after leaving school. This accords with the tendency of parents to rate schools based on their record as to whether their graduates go on to higher education and satisfying occupations.[38]

Parents also assume that their own children will benefit from attending school with such a record. Does this hold true for minority students? In other words, will desegregation of our schools equalize opportunity beyond the classroom? Will it lead to a reduction in income inequalities and adult segregation? The Subcommittee heard convincing evidence that it has. This outcome may be the most profound and beneficial change wrought by school desegregation.

Describing the impact of attending desegregated schools on employment opportunities, Dr. James McPartland summarized the research findings as follows:

School desegregation appears to be an effective way to encourage a more rapid movement of minorities into the nontraditional fields that have frequently been closed to them in the past. The school years are especially important for developing career goals. Research shows that racial differences in occupational choices first occur during the junior and senior high school ages. Other studies indicate that black males who had attended desegregated high schools were more likely to wind up in nontraditional mainstream careers in sales, crafts and the professions than those who had attended segregated schools.

Second, good jobs are often found through the use of informal networks of information, contacts and sponsorship, which appear to be less accessible to minorities in segregated environments. Recruitment, hiring, and promotion practices of firms often use informal social networks to locate and evaluate candidates. Unless minorities are tied into these networks, they may rarely be "in the right place at the right time" to become applicants for promising positions . . .

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[37] Testimony of Willis Hawley, Hearings at p. 426.

[38] Dr. Christine Rossell testified that parents often rate suburban, all-white schools as superior because they assume they have financing and facilities superior to inner-city schools. In reality, this is often not the case, and what parents are really looking at is the fact that "upper middle class white kids go on to college and people think that if you send them to those schools, your kids will get the 'good education.'" Hearings at p. 233.

Third, the perception of opportunities creates the psychological conditions through which an individual approaches the labor market. When an individual expects to face discrimination in a career line or in a firm—even if this expectation is incorrect, out-of-date, or overstated—it is unlikely that the individual will bother to explore many possibilities in that area. On the other hand, an individual who begins with a strong sense of opportunity can draw upon this strength to build a career in a wide range of areas. Repeated studies have shown that blacks and other minorities have a much lower sense of opportunity than whites, and feel less personal control over their own destinies. While this often reflects the realities of differences in employment opportunities, research also indicates that school desegregation serves to reduce the racial gaps in perception of opportunities. Specifically, minority students who graduate from desegregated schools have been found to feel a greater sense of control over their own fate and a more positive sense of opportunity. Research also suggests that students' desegregation experiences directly improve these perceptions, and that upgrading the quality of schooling in a segregated setting would not have the same impact.[39]

Dr. McPartland also noted that:

• • • students from segregated schools are more likely to be found later in life in segregated colleges, neighborhoods and places of work, while students who had attended desegregated elementary and secondary schools are more likely to choose to live in desegregated neighborhoods, to enroll in desegregated colleges, to enter desegregated occupations and firms, and to send their own children to desegregated schools.[40]

2. IMPACT ON HOUSING PATTERNS

It has long been suggested that the most effective and stable alternative to busing as a means of achieving school desegregation is residential integration. The effort by this Committee in the last Congress to strengthen the federal fair housing law[41] was, in part, promoted by this desire to create naturally integrated schools that would obviate the need for busing for purposes of desegregation.

However, the Subcommittee has learned that while segregation in schools clearly results from residential segregation, it also works the other way—segregation in schools contributes to segregation in housing. Indeed, this tendency may be more potent, and in any event, must be considered in devising strategies for school desegregation.

The basis for this impact is readily apparent. In making housing choices, parents (or parents-to-be) consider the reputation of the neighborhood school. For many parents, this factor is paramount, as Congressman Shumway explained:

. . . In many cases, [families] have arduously saved money in order to purchase a home in a neighborhood which would feed to a school more to their liking, only to find once they got there that the school district has reassigned their children, or perhaps many of the other children in that school back to the inferior schools from whence they came.[42]

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[39] Testimony of James McPartland, Hearings at p. 434.
[40] Ibid., at p. 435.
[41] See, Fair Housing Amendments Act of 1979, Hearings before the Subcommittee on Civil and Constitutional Rights, 96th Congress. That bill (HR 5200) was passed by the House of Representatives on June 12, 1980, but failed in the Senate after a vote to end debate was defeated.
[42] Testimony of Congressman Norman Shumway, Hearings at p. 188.

Chosing a neighborhood on the basis of the school tends to have a segregating effect because, as one expert explained:

> Schools tend to stamp their identity on the neighborhood, and school boundaries often actually define neighborhood boundaries. When schools are segregated and racially identifiable, they tend to influence housing choices along racial lines. Whites are not likely to buy in a neighborhood with a black or minority school, while minorities may find it difficult to buy into a community with a white school.[43]

Similarly, school choices are influenced by the fact that parents tend to perceive identifiably "white" schools as "good" schools, or at least more highly valued within the society,[44] whether or not that quality is objectively present in the form of superior student performance, faculty, resources, or curriculum.[45]

These assumptions are shared by real estate brokers, as evidenced by their practice of steering whites toward white schools and advertising the name or location of schools only when those schools are known to be white.

> A survey of real estate brokers' practices in the studied cities revealed that where the schools are segregated, whites are steered away from minority or mixed schools. Likewise, an HUD study of housing discrimination in 40 cities documented the use of schools to steer homeseekers, as in the following remark recorded by one of the white homeseekers in Monroe, Louisiana. The agent said "that no blacks attended the school where the number two inspected house was located."
>
> Real estate advertising practices in the study cities showed similar patterns. If school names were neutral geographic information, they would be mentioned about as often in one city as another. But that was not the case.
>
> The median percentage was 98 percent white, meaning half of the named schools were 98 to 100 percent white. In short, racially identifiable schools facilitate housing choices along racial lines, locking these communities into a vicious circle with school segregation reinforced with housing segregation.[46]

When schools are no longer racially identifiable, as is the case when schools are desegregated on a metropolitan-wide basis, they become "just schools," and this cycle breaks down. As Dr. Pearce explained:

> Other, less segregative choice factors become more important [such as proximity to work], and the surveyed real estate agents were much more willing to show homes throughout the community.[47]

Furthermore, school desegregation may lead to a change in perceptions as to which schools are "good" schools. Dr. Pearce reported, for example, that real estate brokers in such communities tended much more often to tell home seekers that "all the schools are good."[48]

The desegregating effect on housing has been recorded in major metropolitan areas across the country. In Dr. Pearce's words:

> In each pair of cities, it was found that the community that had had metropolitan-wide school desegregation has experienced substantially greater reductions in housing segregation than the otherwise similar community that had not had broad-based school desegregation.

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[43] Testimony of Diana Pearce, Hearings at p. 193. Dr. Pearce conducted a study of comparable cities, pairing those that had had metropolitanwide school desegregation and those that had not. See Pearce, *Breaking Down Barriers: New Evidence on the Impact of Metropolitan Desegregation on Housing Patterns*, Center for National Policy Review, 1980.

[44] Testimony of Diana Pearce, Hearings at p. 235.

[45] Testimony of Christine Rossell, Hearings at p. 226 and 234.

[46] Testimony of Diana Pearce, Hearings at p. 195.

[47] Ibid. at p. 202.

[48] *Breaking Down Barriers*, *op. cit.*, at p. 19.

> Moreover, the trend seems to be cumulative. That is, housing integration continues to rise year after year. Riverside, California was the earliest of the cities in this study, [school desegregation] having begun in 1965. By 1978, they had eliminated busing in all but four of the 21 elementary attendance areas. The other 17 schools attendance areas had become sufficiently racially integrated so that busing was no longer necessary in order to maintain racial balance in the schools.[49]

Careful planning can avoid resegregation and, as Dr. Pearce stated:

> The choice can be made in ways that are very positive or very negative, with no cost involved in terms of the choice that the school officials have. With a little attention to this, I think a great deal of positive things can be done.[50]

It should be emphasized that the desegregating effect of school desegregation on housing is likely to occur only when the community has a relatively small minority population or when the plan is metropolitan-wide. If nearby suburbs or enclaves within the city are exempted from the plan, some parents can and do choose this escape from busing instead of moving to an integrated neighborhood. Indeed, it is when the desegregation plan is limited to the inner city that the phenomenon of "white flight" attributable to school desegregation is most pronounced.

3. WHITE FLIGHT

"White flight" was a term originally used to characterize the post-World War II movement of white middle class Americans to the suburbs. This exodus was prompted primarily by "pull" factors—greater suburban space, greenery, and (until recently) lower cost family housing, lower tax rates, federal housing loan policies, and changes in production and transportation patterns. More recently, the term white flight has been used to describe simply the decline in central city white public school enrollment.

It has been argued that the use of busing for school desegregation has so exacerbated this movement that schools, as well as housing, are being resegregated. Indeed, there is a concensus among researchers that under some circumstances, white public school enrollment has declined as a result of a desegregation plan. However, the magnitude of this decline often has been grossly overestimated. Furthermore, it is clear that white flight does not always increase in a desegregating community.

How much white flight has been caused by school desegregation? Many commentators critical of school busing have cited statistics on white flight that fail to isolate the impact of school desegregation from the long-term "pull" factors described above, and from the declining birth rate which has affected all races, but particularly that of whites. But as one expert explained:

> Because of these factors, we can expect most northern central city school districts to have a "normal" percentage public school white enrollment decline of at least 4 to 8 percent annually, and that means even if they don't desegregate, and most northern suburban school districts to have an annual public school white enrollment decline of about 2 to 4 percent, again, even if they don't desegregate.[51]

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[49] Testimony of Diana Pearce, Hearings at p. 193.
[50] Ibid. at p. 229.
[51] Testimony of Christine Rossell, Hearings at p. 219.

The city of Chicago, for example, is sometimes cited as an example of the enormity of "white flight" caused by desegregation. However, that city has undergone virtually no desegregation, so that whatever the magniture of the move from public schools, none of it can be attributed to that factor.

When school desegregation is ordered, research indicates that it has its greatest impact on white flight soon after it is started:

> The implementation year white flight is the single greatest annual loss of whites a school district will experience. After that, the annual loss rate declines rapidly. Suburban and countywide school districts may actually make up their implementation year loss by the fourth or fifth year. Central city school districts, however, are unlikely to make up the implementation year loss. They will either return to the "normal" decline, or a continuing, although smaller in magnitude, annual white flight.[52]

The magnitude of this flight from desegregation depends on a number of factors. The research suggests that white flight is increased by the following:

> The reassignment of whites to formerly black schools; the extent of protest and negative media coverage; the reassignment of whites to older, larger formerly black schools; a greater than 35 percent black population; phasing-in a plan over a period of several years; having a small, geographic boundary encompassing only the central city; elementary school desegregation, although it is the most successful educationally and in terms of race relations in the classroom; long busing distances in city, not metropolitan, school districts.[53]

One important factor that does *not* appear to be linked to the magnitude of white flight is the quality of the public school being abandoned. Dr. Rossell testified:

> I did an analysis of white flight in Los Angeles for the first and second year of desegregation, and I found absolutely no relationship between the median achievement scores of the minority schools and white flight. Whether I looked at math, verbal, or combined them together, there was no relationship whatsoever. The dominant characteristic was that it was a minority school and the length of busing distance. In fact, four minority schools had higher achievement levels than the white schools that they were paired with, and had no difference in white flight compared to the other minority schools.[54]

Again, assumptions about the correlation between race and quality, rather than objective evidence, influenced attitudes and behavior.

It is clear, then, that white flight occurs, but in most cases it can be controlled. For example, even researchers identified with opposition to busing as a remedy for school segregation acknowledge that the metropolitan-wide desegregation busing plans tend to reduce the degree of white flight.

> The losses tend to be smaller . . . and they do not last as long. Therefore, resegregation is less likely in metropolitan plans.[55]

Whether or not this is a realistic policy option remains to be seen.[56] In any case, desegregation plans can minimize flight by considering the factors described above.

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[52] Ibid, at pp. 220–21.
[53] Ibid, at p. 220.
[54] Ibid, at pp. 235–236.
[55] Testimony of David Armor at p. 216.
[56] Dr. Armor believes that it is not. Other witnesses such as Dr. Pearce, believe it is not only the nation's last best chance, but politically feasible. See hearings at p. 216 and 231–233.

REMEDIES

BUSING

The methods available to undo the effects of segregation are as varied as the mechanisms used to create that racial separation. It is, however, the mandatory reassignment of pupils—with busing, where necessary—that has been the primary focus of debate.

Busing has been used to facilitate race-conscious pupil assignments since the last century. Dr. Joseph Johnson, now a superintendent with the metropolitan Wilmington public school system, described his experience in Delaware's segregated school system:

> Our high school was for many years the only secondary school in the State of Delaware that black students could attend. Members of my graduating class rode the school bus from each of the school districts that are sending or receiving communities in the current desegregation area. My classmates were transported across district lines daily throughout their secondary life. At least eleven members of the graduating class elected to move to the Wilmington, Delaware area from other parts of the States to live with friends and/or relatives just to get an opportunity to obtain a high school diploma.[56a]

Similarly, and more frequently, buses transported white students beyond the closest or "neighborhood" schools to segregated schools, or from schools in which they would have been in the minority.[57]

Today, for most school children, busing is a convenience provided by the school system. Because of the greater economy and educational benefits achieved through consolidation, the number of schools and districts has declined enormously since the last century, so that today, for over half of the nation's children, the "neighborhood" school is no longer a reality; the distances to school are such that they ride a bus to school.[58] Less than 7 percent of those children, or 3.6 percent of the total number of school children, are bused for the purpose of desegregation.[59]

The amount of time spent on school buses and their costs have figured prominently in criticism directed at busing for school desegregation. But statistical studies indicate that the median travel time for elementary school students was less than 15 minutes; only 15 percent of those students traveled more than 30 minutes.[60]

Critics should also be mindful of the fact that present constitutional law recognizes that a desegregation plan may not mandate busing involving time that would adversely affect the health of the students or the achievement of educational objectives.[61] To the extent unreasonable transportation times are being imposed, then, modifications can and should be sought under existing law.

The costs of busing have also been grossly misperceived by the public. One witness did a national survey of public attitudes about busing for desegregation, and learned that most people believe that more than

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[56a] Prepared statement of Joseph Johnson, Hearings at Appendix 9.

[57] This device was not limited to the South. See, for example, testimony of the U.S. Commission on Civil Rights, Hearings at p. 258 and 293, regarding use of this practice in Detroit and Pasadena.

[58] See, *Travel to School: October 1978*, prepared by the Bureau of the Census, reprinted in Hearings at p. 757. According to that study, the number of elementary schools declined from 238,000 in 1929 to only 63,000 in 1975, and the proportion of public school students transported to school at public expense increased from 7 percent in 1929 to 55 percent in 1976.

[59] U.S. Commission on Civil Rights, "Fulfilling the Letter and Spirit of the Law," (1976), at p. 202.

[60] *Travel to School*, op. cit. Statistics do not appear to be available establishing either the median time for bus rides to public schools, nor the time differential—if any—between busing for desegregation and other school busing.

[61] *Swann v. Charlotte-Mecklenburg Board of Education, supra.*

a quarter of the school budget is spent on this function.[62] In fact, the percentage spent is closer to 0.2 percent.[63] Thus, the suggestion that "the money that is being spent on busing could be directed toward improving that quality of education perhaps through improved teacher salaries or better schools or better books . . . "[64] must be recognized as inviting only minor improvements.

In sum, criticism of busing for desegregation must be considered in light of the following: most American children are bused for nonracial reasons without apparent educational or health harm, or parental disapproval; relative to the total costs of public schools, the costs of busing for desegregation are not great; dissatisfaction with this method is voiced more often by those fearing future orders or otherwise not presently involved, than those participating in such a plan.[65]

Most important, however, is the question as to whether busing achieves a degree of desegregation that is unattainable through other means. The Subcommittee believes that it does.

Despite the tendency of desegregation plans (including those with mandatory busing) to accelerate white flight under certain circumstances,[66] the evidence shows that even in the worst case situations—such as Boston—there is more interracial contact than if there had been no desegregation.[67] Furthermore, busing plans—particularly those that exclude integrated neighborhoods—tend to foster residential integration, thereby stabilizing school desegregation and eventually reducing the need for mandatory pupil reassignments.[68]

2. PUPIL REASSIGNMENT WITHOUT BUSING

In many communities, the racial residential and school patterns are such that some desegregation may be obtained through pupil reassignments that need not necessitate busing. Occasionally, simply redrawing the attendance zones for schools alleviates racial imbalance, as when predominantly white and predominantly minority school attendance zones are adjacent. Likewise, since most communities are experiencing a dramatic decline in school populations, selective closings of schools can achieve the same result, with students formerly assigned to a racially imbalanced school now assigned to the remaining schools.[69]

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[62] Testimony of Gary Orfield, Hearings at p. 144.

[63] In its 1976 report, "Fulfilling the Letter and Spirit of the Law," the U.S. Commission on Civil Rights, relying on information provided by the Department of Health, Education, and Welfare, stated at p. 202:

"During the 1973–74 school year, $57 billion was spent for public education, and $1.858 billion of that total was spent for student transportation. Only $129 million of these transportation funds were used to achieve desegregation."

In other words, busing for desegregation accounted for less than 7 percent of the total public school transportation costs, and 0.2 percent of the total cost of public education.

Even when viewed from the perspective of particular communites that have instituted major busing for desegregation programs, the cost of busing compared to the total operating budget is often less than 1 percent. In Los Angeles, for example, busing in 1980–81 cost less than 1 percent of a total school operating budget of about $1.8 billion. (See Los Angeles Times, Nov. 17, 1980, p. 1.)

[64] Testimony of Congressman Bill Emerson, Hearings at p. 534.

[65] See *infra*, at p. 3. It should also be noted that the percentage of elementary and secondary students in private schools has not risen significantly in the last decade (from 10% to 11%). See CRS, "Private and Secondary Enrollment, 1970 to Present," Hearings at p. 755.

[66] See *infra*, at p. 17.

[67] "Mandatory desegregation plans, particularly in school districts above 35-percent black, yield a greater proportion of white in the average black child's school than voluntary plans, although these plans and these districts have greater white flight. Even school districts such as Boston which have experienced massive white flight have a proportion of white in the average black child's school which is almost twice as great as it would have been if the school district had not desegregated." Testimony of Christine Rossell, Hearings at p. 222.

[68] *Infra*, at p. 15–16.

[69] As noted supra, however, care must be taken to avoid resegregating the remaining schools and neighborhoods.

"Pairing" and "clustering" of schools have also been utilized as a remedy for eliminating school segregation. Under this scheme, students from two or more predominantly one-race schools are grouped, so that the total school population is relatively balanced. Those students will then attend a selected number of grades together in one school, and the remaining grades in the other paired school. Often, all of these mechanisms have been used in the same community, sometimes with mandatory busing to rectify the problems at the remaining schools.

Because these methods appear to be less disfavored by the public, school officials and courts attempt to rely on them whenever possible. However, it should be noted that they involve pupil assignment on the basis of race,[70] and therefore would be eliminated as possible federal court-ordered remedies, if certain proposed amendments to the Constitution were adopted.[71]

Magnet schools (schools established with special programs and curricula designed to attract students of all races) have become a popular method for combining desegregation with educational improvements. However, unless a mandatory element is attached—such as racial admission limits or mandatory reassignment to another, non-magnet school in lieu of attendance at the magnet school—desegregation is rarely obtained.[72] Dr. Gary Orfield explained this phenomenon as found in Los Angeles:

> [Y]ou find a good many of the children who were in the magnet schools were not actually in integrated schools, they were in magnet schools that were segregated. Twenty-eight percent of the blacks, for example, were attending magnet programs that had an enrollment of 99 to 100 percent blacks, another 15 percent were in schools that had at least three-fourths minority children.
>
> Of the Latino students in the magnet schools, which is a very small number—only 1 percent—more than a third were in schools where more than three-quarters of the children were from minority groups. In other words, even in this small magnet program, many of the children were in highly segregated magnet schools. They did not produce the remedy of integration that was desired and, at any rate, they reached a very small number of children.[73]

Thus, in communities with a sizeable minority population, magnet schools are a valuable tool for achieving desegregation only when a mandatory element is present. To that extent, magnet schools cannot be considered a "voluntary" remedy.

The Subcommittee does not mean to suggest that magnet schools are not valuable educational improvements that should be fostered even when racial balance is only marginally improved. Among other things, the institution of magnet schools as part of a mandatory plan "reduce[s] the perceived cost of school desegregation."[74] That is, parent and students believe they are gaining educationally under the desegregation plan, and, when the alternative is assignment to a non-magnet school, they form a "safety-valve" in the system.[75]

3. VOLUNTARY PLANS

It has been suggested that, in the long-run, voluntary plans can achieve a greater degree of desegregation than mandatory reassign-

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[70] See Memorandum prepared by CRS, "Legal Analysis of H.J. Res. 56," Hearings at p. 722 et. seq., and "Sundry Questions Regarding the Legal Effects of H.J. Res. 56," Hearings at p. 729 et seq.

[71] E.g. H.J. Res. 56. See discussion *infra*, p. 25–26.

[72] Testimony of Christine Rossell, Hearings at p. 221.

[73] Testimony of Gary Orfield, Hearings at p. 144–145.

[74] Testimony of Christine Rossell, Hearings at p. 221.

[75] Testimony of Suzanne Hittman, Hearings at p. 375.

ment of pupils and that the failure of proof thus far is attributable to a refusal to give these methods a fair chance.[76]

However, it should be noted that in those communites where busing was ordered, voluntary methods initially had been tried for considerable lengths of time, with little or no desegregation resulting.[77] Freedom-of-choice plans—appealing in their simplicity and seeming color-blindness—simply perpetuated segregated patterns. Those voluntary plans that have been hailed as a success have, in fact, achieved only minor reduction in racial isola on.[78]

These voluntary systems fail because of the prevailing perception that formerly black and Hispanic schools are inferior, and the refusal of many whites to transfer there even when "magnet" programs are developed in those schools.[79] On the other hand, when the percentage of minorities is low in a community and minority schools can be closed, voluntary plans are viable:

> . . . [M]agnet schools . . . may bring about desegregation in some communities where there are relatively small numbers of minority students, and that is simply because the relatively small number of white parents volunteering for desegregation along with the relatively large number of black parents volunteering for desegregation can bring about desegregation. But in school systems that have minority populations of 20 percent, 25 percent, or more, there are very few examples where substantial desegregation has been brought about. That, of course, is a pattern not just seen by social scientists but evidenced by a whole range of cases.[80]

Needless to say, voluntary plans are more popular, and, contrary to popular belief, such plans are normally tried first. As Dr. Hawley observed:

> Every system seeks to bring about desegregation voluntarily, but people go back into court saying that not enough racial balance has occurred and they go from there.[81]

Federal Support

As noted at the start of this report, despite the impressive gains of the last decade, federal support for desegregation may be at its lowest ebb since the *Brown* decision.

In testimony before the Subcommittee, the Assistant Attorney General for the Civil Rights Division, William Bradford Reynolds, made it clear that this Administration is not simply refusing to seek busing as a remedy for desegregation. While acknowledging a responsibility to develop "meaningful alternative approaches to accomplish to the fullest extent practicable the desegregation of unconstitutionally segregated public schools," [82] the strategies and actions of this Administration instead suggest a wholesale legal, financial and moral abandonment of that goal.

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[76] Testimony of David Armor, Hearings at p. 214.
[77] See testimony, *inter alia*, of Dr. Jay Robinson (Charlotte-Mecklenburg), Suzanna Hittman (Seattle), and Maxine Smith (Memphis).
[78] In San Diego, cited by David Armor, Hearings at p. 214, as an example of "impressive" progress, "the level of interracial contact is essentially unchanged from what it was before." Testimony of Diana Pearce, Hearings at p. 231–232. See also the testimony of Willis Hawley, Hearings, at p. 431.
[79] See, for example, testimony of Tom Atkins, Hearings at p. 73.
[80] Testimony of Willis Hawley, Hearings at p. 431.
[81] Ibid.
[82] Testimony of William Bradford Reynolds, Hearings at p. 614.

1. LEGAL POSITION

Legally, the Department appears to have taken the position that the effectiveness of a desegregation plan no longer should be assessed in terms of whether or not the deliberately-created racial isolation is reduced. Under this view, if legal barriers to free choice are eliminated, the fact that the school system remains segregated becomes virtually irrelevant. The position shows a fundamental misperception or misstatement of the central goal of desegregation. Segregation is the condition which offends the 14th Amendment's prohibition of racially discriminatory state action. While the Supreme Court uses the term inequality to describe the result of state-supported segregation, Mr. Reynolds takes this literally to mean differences in sums expended on schools. Even if resources were allocated absolutely equally, however a state which segregated on the basis of race would be violating the Fourteenth Amendment.

This position also ignores the nature of intentional segregation today; i.e. segregationist laws and other explicit legal barriers no longer create this racial division. Rather, it is the decisions of school officials as to where to place a new school, how to assign faculty, whether to expand a minority or majority school, and the like, that account for intentionally created segregation today. Decades of such racially tainted decisions have created a pattern of racially identifiable schools that cannot be undone with the stroke of a pen. Even when the segregating action leaves no physical presence--as with gerrymandered attendance zones—ensuing resegregation of neighborhood creates segreated housing and school patterns that cannot be cured by simply redrawing those attendance zones.

The remedies the Justice Department now indicates it will pursue in these situations are those that are unlikely to produce desegregation; rather, they promise at best an open enrollment policy that in the past has only perpetuated segregation, and an equalization of resources between majority and minority schools.[83] This is, in effect, a return to a doctrine of "separate but equal" augmented by a freedom of choice rule. Such a program not only cannot be expected to undo the effects of purposeful racial isolation, it also provides no disincentive for future acts of intentional segregation.

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[83] The following colloquy with the Assistant Attorney General demonstrates this philosophy:

[COUNSEL]. Assume that in a case before a court there is a finding both of intentional acts which created a segregated school system, and allocation of resources between these segregated schools that was unequal, so the black schools would get fewer resources than the white schools. Would you say that it would be a constitutionally adequate remedy for the courts to order a reallocation of resources so that those black and white schools receive equal resources?

Mr. REYNOLDS. Well, I think that would be one element of the remedy. But I think you also would have to remove the barriers that had been placed by the State in the way of an open student enrollment, so you would have to have as elements of your remedy the desegregation package, if you will that I have outlined in my testimony. That would have to be in addition to addressing the educational component.

[COUNSEL]. Suppose the barriers are such that they are already in place in a very physical way, such as the location that the school board chose to put new schools, the expansion of black schools to accommodate a growing black population, rather than having those additional black students go to neighborhood white schools, and so forth. What would be the appropriate remedy in these circumstances?

Mr. REYNOLDS. Well, in the abstract I would have to say that certainly some combination of those remedies that I have addressed on pages 13 and 14 of my testimony.

[COUNSEL]. They are what, again?

Mr. REYNOLDS. The voluntary student assignment program, magnet schools, and enhanced curriculum requirements, faculty incentives, in-service training programs for teachers and administrators, school closings, if you have excess capacity, or new construction where that may be called for. I'm not suggesting to you that's an exhaustive list, but certainly the relief fashioned should include some or all of those elements and maybe more.

(Continued)

The Department's legal position, then, is at odds with the established law that the measure of the adequacy of a desegregation order is whether it "works." The articulation of the Administration's policy is not simply theoretical, however. In several recent cases, the Department has abruptly reversed positions, and accepted desegregation plans previously denounced as totally inadequate.[84]

A change in legal analysis has also been proffered as the reason for the Department's changing sides in the Seattle case.[85] As a result, the Administration is now in a position of supporting the dismantling of what seems to be a successfully implemented school desegregation plan.[86]

The Seattle case also points to a central irony: while favoring local control in many instances, here the Administration disfavors the maintenance of traditional decision-making at the local school board level, where it long has reposed in every state. The shift in position also strikes a blow to the factors considered most important to the success of desegregation plans—local initiative, support, and involvement.

Consistent with and supportive of the Administration's repudiation of effective remedies is its refusal to uphold the principles of several crucial Supreme Court cases. Particularly destructive to the effort to eliminate officially sanctioned and fostered segregation is

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(Continued)

[COUNSEL]. Are you suggesting that if a community intentionally chooses sites for its schools that create a segregated system, and those schools are built, there should be no remedy that actually desegregates those facilities other than on a voluntary basis?

Mr. REYNOLDS. I think, using those components that I mentioned to you, I would say that would be the proper way to address the problem. I think that every kid in America has a right to an integrated education where he wants it, especially if you have a *de jure* situation. I don't think that means that the Government can compel an integrated education. I don't think there's anything in the Constitution that suggests it can, or in any other cases by the Supreme Court or the lower courts. Our remedies will be designed in order to help those kids that want to have an integrated education to have it. We are going to remove whatever the artificial barriers are that the State has imposed to permit the children to have that education.

With respect to forced busing, what we are saying is, though, that we are not going to compel children who do not want to choose to have integrated education to have one. I think what we have done in our remedial package is to add the component for those children who do not choose to have the integrated education, those to be insured that the education that they get is going to be in parity with and on a par with the education that everybody else is getting. And that's why we think we ought to go back and look at what *Brown* v. *Board of Education* said and focus on what its concern was, and say the educational component is something that ought to be dealt with. And if there are children in the system who don't choose to have an integrated education, they should have the same education in the predominately one-race school. And if there are children in the system that do choose to have the integrated education, they ought to be allowed to have it. They ought to be allowed to choose it wherever they want to, and the remedy that we have put in place is going to insure that they get that.

Hearings, at p. 631–632.

[84] Most striking is the case involving the city of Chicago. The Department has now agreed to a plan which (1) defines a 70 percent white school as permissibly desegregated, in a city with a white school population of 20 percent; (2) delays any mandatory busing until September 1983; (3) embraces a set of voluntary desegregation techniques which had already failed in Chicago and has shown very minimal success in other areas of the country. Thus, the plan promises only minimal desegregation.

[85] In *State of Washington* v. *Seattle School District No. 1*, the Department has now reversed the position it is taking in the Supreme Court.

Originally, the Civil Rights Division joined the City of Seattle in challenging the constitutionality of a state-wide initiative which prohibited local school boards from voluntarily adopting mandatory school desegregation plans.

In the district court and the Ninth Circuit, the Justice Department successfully argued that the initiative was unconstitutional since it created a racial classification by allowing school busing for every purpose except desegregation. Moreover, the local school board showed that the initiative was unconstitutionally tainted by the racially discriminatory intent of many of its sponsors, motivated by invidious bias against minority persons and undesirous of associating with them.

Now claiming that education is a subject for state, as opposed to local, control and expressly rejecting prior Department arguments, the new administration has asked the Supreme Court to reverse the Ninth Circuit and to uphold the constitutionality of the initiative.

[86] See testimony of Suzanne Hittman, Hearings at p. 370 et seq.

the Department's announced refusal to rely upon the "*Keyes* presumption." In *Keyes* v. *School District No. 1, Denver, Colorado*,[87] the Supreme Court held that once a court has found that substantial segregation has been caused by school authorities, it may impute (though not irrebuttably) the remaining segregation to school authorities. Following this presumption, previous Administrations had favored system-wide remedies in both the North and South, and had supported transportation remedies necessary to effectuate system-wide relief.

The significance of this new position is not only that the Department is failing to uphold the law; by seeking only partial relief (in only part of the school system), residential instability will be fostered, as white parents seek to enroll their children in schools not touched by desegregation. Furthermore, with only a fraction of a district involved, meaningful desegregation may not be possible.

In one respect, the Department has stated an interest in expanding enforcement activities: where schools are *de facto* racially imbalanced, (i.e. not as a result of intentional state action) and resources are significantly and intentionally allocated discriminatorily, the Department will challenge this allocation as a constitutional violation.

Another witness confirmed the existence of the problem of intra-district inequities:

> A new and emerging area of research is called the study of intradistrict inequalities. I am speaking now of the per student support that varies within the same school district from one school to another, not between school districts but within the same school district.
>
> I would say in the last 2 or 3 years at the most there have been more scholarly analyses of this question than have been published in all our history, and it will I think expand. It tries to face up to a very specific question, namely are schools attended by poor and minority children being shortchanged by local school districts in the way that Federal, State, and local finances and funds are distributed from school to school?
>
> In 1966, the Coleman report, reported that there were no significant differences as between schools that were attended by minority students and those by whites. But in the last 2 or 3 years enough evidence has accumulated to put that misconception aside. So what we are finding out more and more is that urban schools, especially, are typified by a very significant inequality in the amount of resources.[88]

Theoretically, the Subcommittee welcomes this approach; however, the remedies appropriate to this kind of violation cannot suffice for those appropriate to *de jure* violations. If a community has not only intentionally segregated its schools, but also intentionally shortchanged minority schools, a settlement assuring the upgrading of minority schools is inadequate. Nevertheless, there are indications that the Department is considering such solutions in several cities.

2. OMISSIONS AND FAILURES TO PROCEED

The Attorney General has cautioned that this change in direction should not be taken "as a signal that the Department of Justice will not vigorously prosecute any governmental attempt to foster segregation. We will not countenance any retrenchment here . . ."[89]

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[87] 413 U.S. 189 (1973).
[88] Testimony of Meyer Weinberg. Hearings at p. 404.
[89] Speech before the American Law Institute, May 22, 1981.

Nevertheless, the record thus far indicates that the federal government has done very little to fulfill this warning not to discriminate. No investigative initiatives have been announced, (for either *de jure* or *de facto* cases), no enforcement priorities have been set and prior cases poised for prosecution have lain dormant.[90]

The policies of the Department, combined with these omissions, reverse the historic role of the Department. Previously eager to at least present the image of a strong enforcer of the civil rights statutes and the rights of minorities, the Department has given up all illusion of such a role. Its actions and omissions signal that the Civil Rights Division now has become a negative force, providing solace to those who have violated and will continue to violate among the most important laws of this nation.

3. FINANCIAL SUPPORT

The primary instrument for federal financial support for school desegregation had been through the Emergency School Aid Act (ESAA).[91] That law authorized financial assistance for two purposes:

> To meet needs occasioned by the elimination of minority group segregation and discrimination among elementary and secondary school students and faculty; and
>
> To encourage voluntary reduction or prevention of minority group isolation in schools with substantial proportions of minority group students.

Many of the voluntary desegregation options favored by this Administration had been funded by grants under this program, such as magnet schools, pairing of schools with colleges and businesses and construction of neutral site schools.[92] Nevertheless, changes in the law and funding levels have ensured that these activities will diminish if not disappear in many communities. For exampe, the funding for fiscal year 1982 for the entire State of Delaware is 50 percent less than the 1981 ESAA funding just for the New Castle County school district. Even these funds may not be available to that district, since the law no longer targets funds specifically to the purposes of the program.[93]

Proposed Constitutional Amendments

Several measures have been referred to this Subcommittee which would affect the ability of courts or agencies to order school desegregation remedies. Prominent among these is H.J. Res. 56, a proposed amendment to the Constitution introduced by Congressman Ron Mottl. It provides:

> No court of the United States shall require that any person be assigned to, or excluded from, any school on the basis of race, religion, or national origin.

The meaning and effect of this measure are in dispute. Its sponsor testified that his purpose is simply to remove the remedy of court-ordered busing:

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[90] Prosecution involving St. Louis, among others, reportedly has long been ready for enforcement action. See, for example, Testimony of Tom Atkins, Hearings at p. 31.

[91] The Emergency School Aid Act is an official destination for Title VI of the Elementary and Secondary Education Act of 1965. ESAA was originally passed as Title VII of the Education Amendments of 1972, but the Education Amendments of 1978(Public Law 95–561) made it part of ESAA beginning in fiscal year 1980.

[92] Funding for the ESAA between 1973 and 1980 was never less than $215 million nor more than $300.5 million.

[93] See CRS memorandum, "The Possible Impact of the Education Consolidation and Improvement Act of 1981 on Activities That Have Been Funded Under the Emergency School Aid Act," Hearings at p. 733 et seq.

I, like you, believe that we have to desegregate the school systems that are segregated. But we have to use the proper remedy. The remedy I want to get rid of is a remedy that has been a total failure in my opinion. That remedy is court-ordered busing.[94]

Congressman Mottl disclaims any interest in barring other race-conscious remedies.[95] However, as the analysis submitted to the Subcommittee by the American Law Division of the Congressional Research Service suggests, the resolution would bar federal courts from ordering a wide range of race-conscious remedies traditionally used in desegregation cases. These include not only busing, but also the redrawing of school attendance zones, neutral site selection for new school construction, school consolidations, teacher assignments and so forth.[96]

The Department's support for these race-conscious remedies puts it at odds with the apparent broad reach of this proposal.

The Subcommittee concurs with the views expressed by many of our witnesses, to the effect that proposals such as H.J. Res. 56 would nullify judicial protection of the constitutional rights recognized in *Brown* v. *Board of Education*, thereby inhibiting virtually all efforts to desegregate the nation's public schools.[97]

Strategies for Effective Desegregation

Perhaps the greatest value of the Subcommittee's hearings will be its contribution to a better understanding of how to make a desegregation plan "work" for the students and the community. Effectiveness, however, must be measured by different and sometimes competing goals: the reduction of racial isolation; the avoidance of resegregation, and white flight within schools and among school systems; improved race relations; academic achievement; and community support for public education.

The pupil assignment plan is usually the key factor in shaping the chances for a plan's success. The Subcommittee concurs with the findings of the Vanderbilt University study that pupil reassignment plans are most likely to be effective across a range of goals when they:

Begin the desegregation of students at the earliest age possible;

Are mandatory but provide parents with educational options both within and among schools. Magnet program can be effective when there are a substantial number of minority students in a school system. They are most effective in reducing racial isolation in the context of a mandatory plan;

Enrich the curriculum in all schools, not only in "magnet" schools;

Affect the entire community and all ages of children simultaneously; phasing in plans results in greater resistance and exits from public schools. Plans such as this by themselves trouble and encourage white flight and generally destroy confidences in their own systems;

Take into account the special needs of different racial and ethnic groups;

Encourage stability in teacher-student and student-student relationships and otherwise reduce the uncertainties parents have about where their children will attend and who will be responsible for their education;

Retain a "critical mass" of students of any given race or ethnic group; that is, 15–20 percent, in each school, if possible; and

[94] Testimony of Congressman Ron Mottl, Hearings at p. 14.
[95] Ibid p. 15.
[96] See CRS, "Legal Analysis of H.J. Res. 56 . . .", Hearings at p. 729 et seq. "Sundry Questions Regarding the Legal Effects of H.J. Res. 56 . . .", Hearings at p. 729 eq. seq.
[97] For a fuller discussion of the implications of H.J. Res. 56, see Testimony of Tom Atkins, Hearings at p. 38–40, Testimony of Julius Chambers, Hearings at p. 65–69.

That percentage may vary by the character of minority population in the school, the nature of residential patterns in the community and other factors.[98]

But as the Director of that program emphasized, "Mixing students by race and ethnicity establishes the basic conditions for desegregated schooling, but it is what happens in schools and classrooms that determines student outcomes."[99]

Among the things school systems can do to improve achievement and race relations, and avoid resegregation are:

Create schools and instructional groupings within schools of limited size that provide supportive environments in which teachers can know most students and can provide continuity in learning experiences. . . .

Develop multiethnic curriculums . . . [W]e often approach the problem of human relations as a kind of separate activity, a brotherhood day or a once-a-week session where there is an announcement that says that we will now talk about human relations. These kinds of programs are not likely to be effective.

Make human relations the fundamental component of everything that is done in that school.

Maximize direct parental involvement in the education of their children. [S]chools are not used to doing such things. School desegregation places a special demand on schools to take the initiative in seeking parents out. One of the problems that, of course, is created by school desegregation is that parents sometimes are at greater distances from the schools than they would otherwise be.

There is a rather simple answer to that in many communities and that is to bring the school to the parents in the form of holding teacher-parent meetings, PTA meetings, and the like in the school nearest the student's homes, in community centers and other places in the community such as, for example, a housing project, if there is one involved, or in churches and the like.

Discourage interstudent competition while holding high and attainable expectations for individual students.

Maintain discipline through clear rules of student behavior that are consistently and fairly enforced.

Maximize participation in extracurricular programs that provide opportunities for interracial interaction. That is somewhat more difficult than it sounds and it means that school systems should plan early to have effective interracial integration outside the classroom. If you want to have an interracial orchestra, for example, you may have a strings program in primary schools.[100]

As the discussion above indicates, increased flight of the middle class from public schools can occur following desegregation. The Subcommittee agrees with the Vanderbilt study that:

School systems can reduce the overall effects of middle class flight by providing accurate and thorough information to parents, involving the community in the development of the assignment plan, acting promptly, minimizing disruption, actively recruiting private school parents, taking the offensive in providing news to the media, creating incentives for integrated housing, and pursuing metropolitan-wide desegregation programs and plans—including cross district voluntary programs—and providing diverse and advanced curriculums.[101]

Clearly, all of these variables and strategies must be considered in light of local conditions. No single plan is ideal. The degree of white flight, for example differs dramatically from community to community, and can and should influence the structure of the desegregation plan. As one witness stated:

[I]n situations where a school district is three-quarters white and one-quarter black, the problems of white flight are relatively small and containable, and that

[98] Testimony of Willis Hawley, Hearings at p. 420–421.
[99] Ibid. at p. 421.
[100] Ibid.
[101] Ibid at p. 422.

makes things rather cheery since the public schools in the United States are 80-some-odd percent majority, I guess. Most of the places that we are talking about having problems with white flight is not because it will cripple a desegregation plan.

When you get to a school district like Detroit—I guess Detroit was probably 60 percent black at the time of *Milliken*—in that situation the judge said we cannot desegregate every school. So we will write off half of the ghetto and desegregate the other half, creating schools that are about 50–50 black and white. That is done. There was considerable white flight, but also considerable desegregation, but not as much as you might wish.

When you get to a situation like contemporary Philadelphia where the public schools I guess are close to 80 percent black, in that situation the kind of traditional desegregation plan is not going to work, and as far as I know no one is going to ask for it.[102]

Conclusion

It has been said that the opposition to school desegration is premised on a belief that even though public officials might well have violated the law, the children should not be made to pay the price of the transgressions. But, as the General Counsel for the NAACP stated:

The problem with that line of reasoning, . . . is that it ignores that the real beneficiaries of school desegregation are the children. The black children who will be prevented from attending classrooms and in school buildings made separate and kept inferior by deliberate public policy of which they are fully aware; white children who will be spared the crippling racial prejudice and hatred their parents in all too many instances grow old with and die with—the children benefit. And what study after study . . . shows is that where the old folks get out of the way, the young folks can make it work.[103]

Where men and women of good will make the effort to make desegregation work, racial barriers can be dismantled beyond the classroom, too, thereby richly rewarding the community. As the Superintendent Jay Robinson stated of his community:

In my opinion school integration has significantly contributed to the good race relations and quality of life in Charlotte and Mecklenburg County . . .

I believe our community is a better place to live and the overall quality of our schools is better today than it would have been if the *Swann* decision had never been made . . .

There is an air of optimism in the Charlotte-Mecklenburg schools. Morale and expectations are high. I would prefer being superintendent in Charlotte-Mecklenburg to any large school system in this country. The major reason I feel this way is that I sincerely believe we have successfully handled the problems of school integration. In large measure we have put racial strife and bigotry behind us and are concentrating on improving the quality of education for all our students.[104]

Finally, these words of yet another witness put the issue into the appropriate perspective:

Debates over school desegregation are often dominated by myth, anecdotal war stories, and promises of easy solutions. Desegregation has increased demands on school systems and on communities. In some cases, this has resulted in unhappy outcomes. In others, it has resulted in needed improvements in educational programs. While many of the shortcomings of public schools and many of the nationwide demographic trends are blamed on school desegregation, the available evidence indicates the costs of desegregation have been overstated and the benefits have been underrecognized. In any case, it seems time to focus our attention away from the past to what can be done to improve public schools.[105]

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[102] Testimony of Robert Crain, Hearings at p. 412–413.
[103] Testimony of Tom Atkins, Hearings at p. 44.
[104] Testimony of Jay Robinson, Hearings at p. 18–19.
[105] Testimony of Willis Hawley, Hearings at p. 423.

SUPPLEMENTAL VIEWS OF MESSRS. HYDE, SENSENBRENNER, AND LUNGREN

Few civil rights issues have been more divisive than forced busing to achieve an arbitrary racial balance in our public schools. Dislike for this practice exists in black and white communities alike, and is growing. Columnist William Raspberry, an outspoken critic of forced busing, has complained that the principal question which each of us should ask is not whether this remedy has resulted in the desired racial mix, but whether "anyone—including the NAACP—has done as much as possible to improve the education of black children." "Color," he goes on to say, "isn't the problem; education is."[1] We agree.

Tragically, "separate but equal" was once the law in the United States, condoned by the Supreme Court in one of its least sublime moments.[2] In 1954, it reevaluated the standard and correctly found it wanting. Presented with cases from Virginia, Kansas, South Carolina, and Delaware, in which public schools were segregated along racial lines, the Court held in *Brown* v. *Board of Education* (*Brown I*) that such facilities "are inherently unequal" [3] and therefore violative of the equal protection clause of the Fourteenth Amendment. In a subsequent decision based on a re-argument of the same case, the Court granted wide, equitable discretion in the remedies from which district courts might choose. The seed was thus planted for the unintended busing difficulties which plague us today.[4]

In our judgment, *Brown I*:

> [did] not decide that the federal courts are to take over or regulate the public schools of the states. It [did] not decide that the states must mix persons of different races in the schools or must require them to attend schools or must deprive them of their right of choosing the school they attend. What it has decided, and all it has decided, is that a state may not deny to any person on account of race the right to attend any school that it maintains.[5]

Forced busing, then, began as a remedy to eliminate *de jure* segregation in limited parts of the country and, as it spread, soon became part of a nationwide problem. In *Swann* v. *Charlotte-Mecklenburg Board of Education*,[6] the Court upheld the decision of the district court to utilize busing as an enforcement tool in implementing the Fourteenth Amendment. Bus transportation, said the Court, "cannot be defined with precision." [7] It is, however, "within [the district court's] discretionary powers, as an equitable remedy for * * * particular circumstances." [8] On the other hand, the Court embraced the

[1] William Raspberry, "Why is Busing the Only Route?" Washington Post. Hearings at 8 pp. 12-13.
[2] *Plessy* v. *Ferguson*, 163 U.S. 537 (1896).
[3] 347 U.S. 483, 495 (1954).
[4] *Brown* v. *Board of Education* (*Brown* II), 349 U.S. 294-300 (1955).
[5] *Briggs* v. *Elliott*, 132 F. Supp. 776, 777 (1955).
[6] 402 U.S. 1 (1971).
[7] Id., at 29.
[8] Id., at 25.

district court's finding in its August 3, 1970 memorandum decision that:

> this court has not ruled, and does not rule that "racial balance" is required under the Constitution; nor that all black schools in all cities are unlawful; nor that all school boards must bus children or violate the Constitution; nor *that the particular order entered in this case would be correct in other circumstances not before this court.* (Emphasis in original) [9]

While sustaining the decision to bus students in *Swann*, the Court took pains to note as well that "[a]n objection to transportation of students may have validity when the time or distance of travel is so great as to either risk the health of the children or significantly impinge on the educational process." [10]

We believe this point of overkill has been reached far too often in recent years. The zeal of some federal judges, encouraged by groups purporting to represent the educational interests of minority children, has, in far too many cases, substituted litigation for education, and helped produce near fatal funding deficiencies in local school systems. This tactic instead has raised the counterproductive specter of resegregation due to "white flight", a phenomenon which cannot be ascribed solely to racial prejudice. On the contrary, the controlling factors are not so much racism as the natural inclination of parents to have their children attending schools close to the home setting, combined with the perception, if not the reality, that crime and harassment are more prevalent, and academic standards less stringent, in schools located in the inner-city. These are very real fears which mere rhetoric cannot dispel.

In hearings before this Subcommittee, witnesses expressed their concern about the disruptive effect of forced busing. Dr. Nathan Glazer, a social scientist from Harvard University, testified that:

> [i]n Boston, to take one particularly hard case, after seven years of court-ordered and administered forced racial assignment of students, the school system has lost many thousands of white—and black—students, costs have risen greatly, and the reputation of the school system is as bad as it has ever been.[11]

Reinforcing Dr. Glazer's assertion that middle-class blacks have begun to join whites in fleeing urban schools victimized by poor educational opportunities, the Washington Post, in one of a series of articles on the growing black middle-class in suburban Washington, D.C., commented:

> Education is in fact the reason many of the families, like the white families who came to the suburbs before them, are here. They were concerned that the District's public schools were no good and hoped that the [suburban] Prince George's system would be better.[12]

[9] Id., at fn. 9.
[10] Id., at 30-31.
[11] Hearings (September 17, 1981), at p. 47. In fact, in a recent survey of parental preferences in Chicago, Illinois, released in December, 1981, by the National Opinion Research Center of the University of Chicago, 51 percent of all blacks sampled opposed forced busing to achieve school desegregation as did 56 percent of all Hispanics. (See Subcommittee Report.)
[12] Washington *Post*, Oct. 5, 1981, page A-1.

Unfortunately, when asked about the possibility that many blacks, like their white contemporaries, might have more concern for a better education than they do for arbitrary statistical balances, Dr. Christine Rossell, of Boston University, replied that such a view reflects "racist" attitudes which some blacks hold for other blacks.[13] In other words, to leave a school system because of concern for a quality education, according to Dr. Rossell, is racist if it means that the majority of those left behind are black. In our view, subscribing racially prejudiced motives to parents who want acceptable academic challenges for their children is overly simplistic and hardly professional. It is further our view that, as we have said, most parents who oppose busing do so not because their child may sit next to a black child in school, but because they are distressed about the time which they believe is wasted traveling to and from school, about the lack of parental input possible in a school distantly located from the home, about the safety factors which they see as inevitable in inner-city environments, and about the resultant academic deterioration which can only be heightened by high teacher turnover and diminished financial resolve.

Moreover, it is ironic that so many advocates of forced busing send their own children to exclusive private schools, often without the benefit of exposure to many blacks.[14]

Dr. David Armor, senior social scientist at the Rand Corporation in Santa Monica, California, testified that scores of cities with court-ordered busing have experienced white flight and resegregation. Among them is Los Angeles, where a study has revealed that opposition to busing, once again, is spurred by educational rather than social concerns. Among the other nontraditional venues he named were Denver, San Francisco, Omaha, Seattle, Oklahoma City, and Dallas.[15]

One of the best examples of the disaster busing can cause is presented by Memphis, Tennessee. The Subcommittee invited Mrs. Maxine A. Smith, President of the Memphis Board of Education, to appear before us on October 14, 1981. She claimed that the school system in Memphis was no different in 1972 than it was before *Brown I* in 1954.[16] What she did not say was that many highly placed blacks in Memphis have begun to question forced busing as a means to higher socio-economic achievement. In 1970, the white enrollment in Memphis amounted to 48.4 percent of the total, with blacks making up the balance. In 1980, after a decade of court-ordered busing the white percentage had shrunk to 24.7 percent;[17] in short, "there [are] simply not enough white kids left to achieve any kind of meaningful integration."[18]

Why? Partly because 30,000 Memphis students were involved in busing plans which took them out of their neighborhoods and deposited them in one of 26 inner-city schools.[19] As we have seen, those with economic alternatives, regardless of race, often opt out of the social "experiment" and into what they know to be a quality academic environment. As a consequence, the blacks left behind frequently find themselves bused from predominantly black schools near their homes to predominantly black schools across town, a

[13] Hearings, Sept. 23, 1981, at p. 233.
[14] One former congressman, long a staunch supporter of busing to achieve racial balance (and now a judge on a federal circuit court), was heard to justify his decision to send his daughter to an exclusive private school rather than rely on the District of Columbia's mostly black system with the comment: "She wasn't getting the kind of educational challenge I thought she needed . . . ."
[15] Hearings, Sept. 23, 1981, at p. 214 *See also* fn. 7.
[16] Hearings, Oct. 14, 1981, at p. 324.
[17] Id., at 5.
[18] David Dawson, "Charade on Wheels", Memphis Magazine, October, 1981, at 40.
[19] Id., at 41.

result which benefits no one. Dr. Willie Herenton, who appeared before the Subcommittee on another matter unrelated to is both black and superintendent of the Memphis public schools. He has been quoted elsewhere as saying that:

> There are many segments of the black community [in Memphis] who are unhappy with busing. Initially, I supported busing. I don't ever want to lead anyone to believe that I am not in favor of desegregated educational settings in the schools; I am. However, I am a pragmatist. What we are doing today, busing, simply has not worked.[20]

Even an apologist for liberal causes such as the Washington Post has begun to waiver in its across-the-board support for forced busing. In an editorial published just last May, it concluded:

> The issue of school segregation has moved well beyond the original context: to ensure that all children, regardless of race, have the right to go to any public school they are eligible to attend. The real threat to children today is not so much official segregation as plain bad schools, especially in big cities where black students commonly make up more than three quarters of the public school population.[21]

We deplore and positively reject any suggestion that a return to the kind of educational environment which existed before *Brown I* is appropriate under any circumstances. We are painfully aware, though, how easy it is to focus on racism as the principal motivating factor behind dissatisfaction with forced busing. We are equally aware that such charges, while unfair and clearly designed to be intellectually intimidating, also tend to ignore the crippling effect that busing can have, and has had, on many of our nation's secondary school systems.

We would urge courts and schools authorities to place more emphasis on incentive systems designed to encourage the best teachers to locate in majority-black environments, "magnet schools" to lure academically oriented students into schools with racially mixed student populations, and voluntary systems which permit students, at public expense and regardless of race, to attend the school of their choice.[22]

We agree with Dr. Armor's complaint that voluntary plans, in particular, have not been given sufficient opportunity to succeed; it is therefore misleading to assail them as ineffective.[23] Failure on the part of the Executive and the courts to heed this clear public preference will inevitably lead to a change in the law—probably by constitutional amendment. It is important to stress that it is not busing which we oppose. It is "forced" busing—there is a significant difference. The former is merely transportation, the latter a form of conscription which creates many more problems than it purports to solve.

HENRY J. HYDE.
F. JAMES SENSENBRENNER, Jr.
DANIEL E. LUNGREN.

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[20] Id., at 41–42.
[21] Washington Post, May 7, 1981 (editorial).
[22] The Supreme Court's holding in *Green* v. *County School Board*, 391 U.S. 430 (1968), has often been cited in support of the proposition that voluntary plans are unacceptable. That is not our reading, nor is it the opinion of the Court itself. In *Green*, the voluntary plan under attack failed because students in just two grades, the first and eighth, were required to choose between one of the two schools in rural New Kent County, Virginia. Though all others had the option to choose, they predictably did not, and were assigned to the school they were already attending, each of which was racially segregated. The Court struck down this "voluntary plan" because it offered no "real promise of aiding a desegregation program" designed to achieve a unitary, rather than a dual, school system (*Green*, at 440–441).

The Court, although it had been urged to discard voluntary plans, altogether, held that voluntary plans were not unconstitutional (*Id.*, at 439). Indeed, the Court in *Swann* admitted that such plans "could be . . . valid remedial measure[s] in some circumstances." (*Swann*, *supra*, at 13).
[23] *See* fn. 13, *supra*. The Department of Justice's present efforts in Chicago, Illinois, with a 17 percent white student population, are designed to give voluntarism a chance to work.